

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

**JUSTIN KRIEG and ABIGAIL KRIEG, §
Individually as Wrongful Death §
Beneficiaries of R.K., Deceased, and As §
Representatives of the Estate of R.K., §
Deceased, §**

Plaintiffs,

V.

**NEWELL BRANDS, INC. and GRACO
CHILDREN'S PRODUCTS, INC.,**

Defendants.

CIVIL NO. 6:24-cv-171-ADA-DTG

FILED UNDER SEAL

ORDER ON DISCOVERY DISPUTE

Before the Court is the Parties' Discovery Dispute Chart submitted to the Court, and attached to this Order as Exhibit A. The Court held a hearing on the Chart on April 29, 2025 and issued the following rulings:

1. The Parties are **ORDERED** to meet-and-confer over an electronically stored information (ESI) Protocol for the eight (8) custodians identified by Defendants. The Parties are **ORDERED** to file a Motion for Entry of an ESI Protocol on or before May 5, 2025 at 5 P.M. The Motion shall include an explanation of what the Parties have agreed to, and what is any, is disputed.
2. The Parties are **ORDERED** to meet-and-confer on the specific Request for Productions identified in the Dispute Chart. To the extent disputes remain, the Parties are **ORDERED** to resubmit the Dispute Chart to the Court with more precise explanations of the dispute and relief on or before **May 2, 2025 at 5 P.M.**

IT IS SO ORDERED this 1st day of May, 2025.



DEREK T. GILLILAND
UNITED STATES MAGISTRATE JUDGE

EXHIBIT A

Issue	Requesting Party's Position	Responding Party's Position
No communications and insufficient document production regarding testing of the subject swing.	<p>Documents and communications surrounding, and beyond, the Testing Reports from Taiwanese company Intertek are highly relevant to the claims and defenses at issue in this litigation. Moreover, such documents and communications are clearly discoverable under the Federal Rules of Civil Procedure and the applicable case law.</p> <p>Relief: This Court hereby ORDERS that Defendant Graco Children's Products, Inc. withdraw it's objections and produce responsive documents to Plaintiff Abigail Krieg's First Set of Requests for Production Nos. 1, 2, 3, 13, 21, 29, 30, 38, 39, 42, and 49.</p>	<p>RFPs No. 1, 2, 3, 21, 38, and 39: Graco has proposed ESI search terms and custodians for Plaintiff's review. Once the parties can agree to the parameters of an ESI protocol, Graco has agreed to conduct a search for responsive ESI and will promptly produce same to Plaintiff. Graco does not believe there is a live dispute as to these matters until such a search has been completed and its production has been made.</p> <p>RFPs No 13, 42: Graco produced all its testing documents requested in this RFP at bates stamped Krieg_Graco 00081-Krieg_Graco 00251. Graco has no additional documents responsive to this Request. Accordingly, Graco does not believe there is any live dispute as to these Requests.</p>
No communications and insufficient document production regarding design of the subject swing.	<p>Documents and communications surrounding, and beyond, the Testing Reports from Taiwanese company Intertek are highly relevant to the claims and defenses at issue in this litigation. Additionally, the production of documents entitled "Engineering Change Notice Summary Report" strongly indicates the existence of documents and communications surrounding changes and/or variations to the subject swing at issue. Moreover, such documents and communications are clearly discoverable under the Federal Rules of Civil Procedure and the applicable case law.</p> <p>Relief: This Court hereby ORDERS that Defendant Graco Children's Products, Inc. withdraw it's objections and produce responsive documents to Plaintiff Abigail Krieg's First Set of Requests for Production Nos. 5, 6, 8, 11, 18, 20, 38, 39, 48, and 60.</p>	<p>RFPs No. 5, 6, 8, 11, 18, 20, 38, 39, 60: Graco has proposed ESI search terms and custodians for Plaintiff's review. Once the parties can agree to the parameters of an ESI protocol, Graco has agreed to conduct a search for responsive ESI and will promptly produce same to Plaintiff. Graco does not believe there is a live dispute as to these matters until such a search has been completed and its production has been made.</p> <p>RFP No. 48: Graco has produced its design file, instructions, manuals, labels, and engineering change notices requested for the subject swing to Plaintiffs at bates stamped Krieg_Graco 00252-Krieg_Graco 00421. Graco has no additional documents responsive to this Request. Accordingly, Graco does not believe there is any live dispute as to these Requests.</p> <p>RFP No. 9: requests all documents or communications that identify or reference the manufacturer of all component parts of the subject swing. Such a request is by nature overly broad, as it is not limited to any components that Plaintiff believes are or may be defective or which Plaintiff contends contributed in anyway to the subject incident. Graco has already identified the manufacturer of the swing and component parts in its response to Interrogatory No. 8. If there are specific components Plaintiff is interested in, Graco invites Plaintiff to meet-and-confer with Graco on such specific components, so that Graco can consider a more targeted request.</p>
No communications and insufficient document production regarding manufacturing of the subject swing.	<p>Documents and communications concerning the manufacturer of the subject swing, and its component parts, are highly relevant to the claims and defenses at issue in this litigation. Additionally, Defendant wholly fails to provide any response to Plaintiff's request for production, which clearly violates both the text, and the spirit of, Rule 26 of the Federal Rules of Civil Procedure.</p> <p>Relief: This Court hereby ORDERS that Defendant Graco Children's Products, Inc. withdraw it's objections and produce responsive documents to Plaintiff Abigail Krieg's First Set of Requests for Production Nos. 9, 38, and 39.</p> <p>Communications regarding the marketing of the subject swing is highly relevant to the claims and defenses at issue in this litigation. While Defendant has produced some marketing materials, Defendant wholly fails to produce any internal or external communications surround and/or concerning the marketing of the subject swing. Such communications are clearly discoverable under the Federal Rules of Civil Procedure and the applicable case law.</p>	<p>RFPs No. 38 & 39: Graco has proposed ESI search terms and custodians for Plaintiff's review. Once the parties can agree to the parameters of an ESI protocol, Graco has agreed to conduct a search for responsive ESI and will promptly produce same to Plaintiff. Graco does not believe there is a live dispute as to these matters until such a search has been completed and its production has been made.</p> <p>RFP No. 10: Graco has proposed ESI search terms and custodians for Plaintiff's review. Once the parties can agree to the parameters of an ESI protocol, Graco has agreed to conduct a search for responsive ESI and will promptly produce same to Plaintiff. Graco does not believe there is a live dispute as to these matters until such a search has been completed and its production has been made.</p>
No communications regarding marketing of the subject swing.	<p>Relief: This Court hereby ORDERS that Defendant Graco Children's Products, Inc. withdraw it's objections and produce responsive documents to Plaintiff Abigail Krieg's First Set of Requests for Production No. 10.</p>	<p>RFP No. 14: Graco is producing responsive documents bates stamped Krieg_Graco 00429-Krieg_Graco 00431. Accordingly, there is no longer any live dispute as to this matter.</p>
No communications or documents regarding complaints and/or reports of injuries by users of the subject swing.	<p>Relief: This Court hereby ORDERS that Defendant Graco Children's Products, Inc. withdraw it's objections and produce responsive documents to Plaintiff Abigail Krieg's First Set of Requests for Production No. 14.</p> <p>Documents and communications regarding complaints and/or reports of safety issues, defects, malfunctions, or other issues with the subject swing are highly relevant to the claims and defenses at issue in this litigation. Additionally, Defendant wholly fails to provide any response to Plaintiff's request for production, which clearly violates both the text, and the spirit of, Rule 26 of the Federal Rules of Civil Procedure.</p>	<p>RFPs No. 15, 16, 52: Graco is producing responsive documents bates stamped Krieg_Graco 00429-Krieg_Graco 00431. Accordingly, there is no longer any live dispute as to this matter.</p>
No communications or documents regarding complaints and/or reports of safety issues, defects, malfunctions, or other issues with the subject swing.	<p>Relief: This Court hereby ORDERS that Defendant Graco Children's Products, Inc. withdraw it's objections and produce responsive documents to Plaintiff Abigail Krieg's First Set of Requests for Production Nos. 15, 16, and 52.</p> <p>Documents and communications regarding other similar incidents involving injury to children and involving a Graco swing are narrowly tailored and highly relevant to the claims and defenses at issue in this litigation. Additionally, Defendant wholly fails to provide any response to Plaintiff's request for production, which clearly violates both the text, and the spirit of, Rule 26 of the Federal Rules of Civil Procedure.</p>	<p>RFP No. 24: Graco is producing responsive documents bates stamped Krieg_Graco 00429-Krieg_Graco 00431. Accordingly, there is no longer any live dispute as to this matter.</p>
No communications or documents regarding other similar incidents involving injury to children and involving a Graco swing.	<p>Relief: This Court hereby ORDERS that Defendant Graco Children's Products, Inc. withdraw it's objections and produce responsive documents to Plaintiff Abigail Krieg's First Set of Requests for Production No. 24.</p>	<p>RFP No. 25: Graco maintains its objections to this Request, particularly to the extent it seeks documents and/or information regarding products other than the subject Model swing and/or incidents not substantially similar in all material respects to the incident giving rise to Plaintiffs' Complaint. Such a request also plainly seeks materials that are protected by the attorney-client privilege and/or attorney work product doctrine. Without waiving any objection, however, Graco is producing documents bates stamped Krieg_Graco 00432-Krieg_Graco 00435 and states that there are no additional responsive, non-privileged materials in its possession. Accordingly, there is no longer any live dispute as to this matter.</p>
No communications or documents regarding other similar incidents involving death to children and involving a Graco swing.	<p>Relief: This Court hereby ORDERS that Defendant Graco Children's Products, Inc. withdraw it's objections and produce responsive documents to Plaintiff Abigail Krieg's First Set of Requests for Production No. 25.</p>	<p>RFP No. 28: Graco maintains its objections to this Request, particularly to the extent it seeks documents and/or information regarding products other than the subject Model swing and/or incidents not substantially similar in all material respects to the incident giving rise to Plaintiffs' Complaint. Such a request also plainly seeks materials that are protected by the attorney-client privilege and/or attorney work product doctrine. Without waiving any objection, however, Graco is producing documents bates stamped Krieg_Graco 00432-Krieg_Graco 00435 and states that there are no additional responsive, non-privileged materials in its possession. Accordingly, there is no longer any live dispute as to this matter.</p>
No communications or documents regarding lawsuits involving injury and/or death and involving a Graco swing.	<p>Documents and communications regarding lawsuits involving injury and/or death and involving a Graco swing are narrowly tailored and highly relevant to the claims and defenses at issue in this litigation. Defendant has wholly failed to produce any documents responsive to this request, and has affirmatively stated that none exist, despite the existence of clear and objective evidence to the contrary.</p> <p>Relief: This Court hereby ORDERS that Defendant Graco Children's Products, Inc. withdraw it's objections and produce responsive documents to Plaintiff Abigail Krieg's First Set of Requests for Production No. 28.</p> <p>Documents and communications regarding lawsuits involving a Graco swing are narrowly tailored and highly relevant to the claims and defenses at issue in this litigation. Defendant has wholly failed to produce any documents responsive to this request, and has affirmatively stated that none exist, despite the existence of clear and objective evidence to the contrary.</p>	<p>RFP No. 56: Graco has no non-privileged documents responsive to this Request. Accordingly, there is no live dispute as to this matter.</p>
No communications or documents regarding lawsuits involving a Graco swing.	<p>Relief: This Court hereby ORDERS that Defendant Graco Children's Products, Inc. withdraw it's objections and produce responsive documents to Plaintiff Abigail Krieg's First Set of Requests for Production No. 56.</p> <p>Documents and communications regarding claims and/or notices Defendant Graco sent to its insurance company are narrowly tailored, are highly relevant to the claims and defenses at issue in this litigation, and go directly to establishing when Defendant became aware of the subject incident. Additionally, Defendant wholly fails to provide any response to Plaintiff's request for production, which clearly violates both the text, and the spirit of, Rule 26 of the Federal Rules of Civil Procedure.</p>	<p>RFP No. 77: As Graco previously disclosed, while it denies liability in this matter, Graco has not issued any insurance notices. Graco previously produced insurance declaration pages at bates stamp Krieg_Graco 00001-Krieg_Graco 00002.</p>
No communications or documents regarding claims and/or notices Defendant Graco sent to its insurance company.	<p>Relief: This Court hereby ORDERS that Defendant Graco Children's Products, Inc. withdraw it's objections and produce responsive documents to Plaintiff Abigail Krieg's First Set of Requests for Production Nos. 77 and 78.</p>	<p>RFP No. 17: requests "all documents or communications from any regulatory agency concerning the model subject swing." It is Graco's position that this request is overly broad, vague, ambiguous, and unduly and disproportionately burdensome as phrased. Graco requests that Plaintiffs revise the RFP to narrow their request.</p>
No communications or documents from any regulatory agencies concerning the subject swing.	<p>Documents and communications from any regulatory agencies concerning the subject swing are highly relevant to the claims and defenses at issue in this litigation. Additionally, to the extent Defendant responds to the requests at issue, Defendant cites to the Testing Reports from Taiwanese company Intertek in its response to the requests at issue, however, this is unresponsive to Plaintiff's requests as Intertek is not a "regulatory agency" within the reasonable and ordinary meaning of the phrase.</p> <p>Relief: This Court hereby ORDERS that Defendant Graco Children's Products, Inc. withdraw it's objections and produce responsive documents to Plaintiff Abigail Krieg's First Set of Requests for Production Nos. 17, 63, 64, and 65.</p>	<p>RFP No. 63 and 64: requests documents and communications between governmental entities or agencies regarding the testing of the subject swing. Graco produced testing documents for the swing performed by Intertek and responds that it has no other responsive testing documents.</p> <p>RFP No. 65: requests "all" interaction with non-government industry associations and standards-setting entities, including documents relating to your involvement in the development of testing requirements, standards, and procedures, and your interaction with, lobbying of, influence of, or funding of any entity involved in setting any testing requirements, procedures or voluntary industry standards." This request is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent it is not limited to the subject swing at issue in this complaint. Graco invites Plaintiff to meet-and-confer with it on this topic so that Graco can consider a more narrow or targeted request.</p>

No communications or documents regarding testing requests by any regulator, standards body, or agency (and the results of and protocols for such tests).

Documents and communications from any regulatory agencies concerning the subject swing are highly relevant to the claims and defenses at issue in this litigation. Additionally, to the extent Defendant responds to the requests at issue, Defendant cites to the Testing Reports from Taiwanese company Intertek in its response to the requests at issue, however, this is unresponsive to Plaintiff's requests as Intertek is not a "regulatory agency" within the reasonable and ordinary meaning of the phrase.

Relief: This Court hereby ORDERS that Defendant Graco Children's Products, Inc. withdraw it's objections and produce responsive documents to Plaintiff Abigail Krieg's First Set of Requests for Production Nos. 17, 63, 64, and 65.

Documents and communications from any regulatory agencies concerning the subject swing are highly relevant to the claims and defenses at issue in this litigation. Additionally, to the extent Defendant responds to the requests at issue, Defendant cites to the Testing Reports from Taiwanese company Intertek in its response to the requests at issue, however, this is unresponsive to Plaintiff's requests as Intertek is not a "regulatory agency" within the reasonable and ordinary meaning of the phrase.

No communications or documents regarding any policies/procedures/guidelines regarding design process, risk mitigation, manufacture, testing, complaint, or hazard analysis for Defendant's products.

Relief: This Court hereby ORDERS that Defendant Graco Children's Products, Inc. withdraw it's objections and produce responsive documents to Plaintiff Abigail Krieg's First Set of Requests for Production Nos. 17, 63, 64, and 65.

RFP No. 17: requests "all documents or communications from any regulatory agency concerning the model subject swing." It is Graco's position that this request is overly broad, vague, ambiguous, and unduly and disproportionately burdensome as phrased. Graco requests that Plaintiffs revise the RFP to narrow their request.

RFP No. 63 and 64: requests documents and communications between governmental entities or agencies regarding the testing of the subject swing. Graco produced testing documents for the swing performed by Intertek and responds that it has no other responsive testing documents.

RFP No. 65: requests "all" "interaction with non-government industry associations and standards-setting entities, including documents relating to your involvement in the development of testing requirements, standards, and procedures, and your interaction with, lobbying of, influence of, or funding of any entity involved in setting any testing requirements, procedures or voluntary industry standards." It is Graco's position that this request is overly broad, vague, ambiguous, and unduly and disproportionately burdensome as phrased. Graco requests that Plaintiffs revise the RFP to narrow their request.

RFP No. 17: requests "all documents or communications from any regulatory agency concerning the model subject swing." It is Graco's position that this request is overly broad, vague, ambiguous, and unduly and disproportionately burdensome as phrased. Graco requests that Plaintiffs revise the RFP to narrow their request.

RFP No. 63 and 64: requests documents and communications between governmental entities or agencies regarding the testing of the subject swing. Graco produced testing documents for the swing performed by Intertek and responds that it has no other responsive testing documents.

RFP No. 65: requests "all" "interaction with non-government industry associations and standards-setting entities, including documents relating to your involvement in the development of testing requirements, standards, and procedures, and your interaction with, lobbying of, influence of, or funding of any entity involved in setting any testing requirements, procedures or voluntary industry standards." This request is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent it is not limited to the subject swing at issue in this complaint. Graco requests that Plaintiffs revise the RFP to narrow the request.